Homeowner Associations

by Richard Kirkpatrick, PCAM

Just what is a homeowner association, a community association, condo or townhome association? These associations are the legal entities that govern the business affairs of planned communities.

These organizations are also called common interest realty associations, meaning that they are set up to jointly administer a piece of land or a building that is owned "in common."

Although homeowner associations, or HOA's, have really multiplied in recent years they have been around for quite some time. The word "condominium" is a combination of 2 Latin words that mean "ruled jointly." The modern definition is "an arrangement under which a tenant in an apartment building or in a complex of multiple-unit dwellings holds full title to his unit and joint ownership in the common grounds."

Ancient Romans are thought to have had similar ownership arrangements around forums or open areas, so the idea has been around for a while. In the U.S., a joint ownership corporation has been running a condominium in Baltimore since the 1840's. It is now estimated that there are some 250,000 such associations in the U.S. alone.

Typically, a homeowner's association has three distinct legal parts: 1) a corporation with a board of directors and officers; 2) by-laws that set up the governance of the corporation and its members; and 3) the Declaration of Covenants and Restrictions or the Declaration of Condominium .

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All of these essential parts are tied irrevocably to a piece of land, either a subdivision or commercial development, or condominium or townhomes. The Restrictions on the land or buildings (see above) are the essential element that sets off these projects from other types of developments. Certain practices or uses of the property are typically limited in such a development, often including outward appearances, dimensions, size, etc.

The Community Association Institute in Alexandria, Virginia is the national organization designed specifically to meet the needs of homeowners, managers and others involved in community associations. They have a number of useful publications and articles that are quite useful. They can be reached at *http://www.caionline.com/.*

Mr. Kirkpatrick is principal of the community management firm HMS. He is a Professional Community Association Manager with more than 10 years experience in association management, and more than twenty years experience in financial administration and banking.

Return to HMS Co. Home Page

GREG GANSKE
4TH DISTRICT, IOWA

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FACT SHEET

August 1996

Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service, and Television Broadcast Antennas

As directed by Congress in the Telecommunications Act of 1996, the Federal Communications Commission has adopted rules concerning restrictions on viewers' ability to receive video programming signals from direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), and television broadcast stations (TVBS).

Receiving video programming from any of these services requires use of an antenna, and the installation, maintenance or use of these antennas may be restricted by local governments or community associations. These restrictions have included such provisions as requirements for permits or prior approval, and requirements that a viewer plant trees around the antenna to screen it from view, as well as absolute bans on all antennas. In passing this new law, Congress believed that local restrictions were preventing viewers from choosing DBS, MMDS, or TVBS because of the additional burdens that the restrictions imposed. To implement this legislation, on August 5, 1996, the Commission adopted a new rule that is intended to eliminate unnecessary restrictions on antenna placement and use while minimizing any interference caused to local governments and associations. This rule will become effective after it is approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act.

The new rule prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. These antennas include DBS satellite dishes that are less than one meter (39") in diameter (larger in Alaska), TV antennas, and antennas used to receive MMDS. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use, (2) unreasonably increase the cost of installation, maintenance or use, or (3) preclude reception of an acceptable quality signal. This rule means that, in most circumstances, viewers will be able to install, use and maintain an antenna on their property if they directly own the property on which the antenna will be located.

The Telecommunications Act and this new rule are designed to promote competition among video programming service providers, enhance consumer choice, and assure wide access to communications. The rule allows local governments and homeowners' associations to enforce restrictions that do not impair reception of these signals as well as restrictions needed for safety or historic preservation. The rule balances these public concerns with an individual's desire to receive video programming. The Commission has asked for further comment on whether additional rules should apply to situations where a viewer wants to install an antenna on property owned by a landlord or on common property controlled by a condominium or homeowners' association.

This fact sheet provides general answers to questions that may arise about the implementation of the rule. For further information, call the Federal Communications Commission at (202) 418-0163.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a viewer's ability to receive signals from a provider of DBS, MMDS or TVBS. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a subscriber from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit safety restrictions or restrictions designed to preserve historic districts.

Q: What types of restrictions unreasonably delay or prevent subscribers from receiving a signal?

A: A local restriction that prohibits all antennas would prevent subscribers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also impair the ability to receive service. Thus, local regulations that require a person to obtain a permit or approval prior to receiving service will delay reception; this is generally allowed only if it is necessary to serve a safety or historic preservation purpose.

Q: What is an unreasonable additional cost to install, maintain or use an antenna?

A: Any requirement to pay a fee to the local authority in order to be allowed to install an antenna would be unreasonable, unless it is a permit fee that is needed to serve safety or historic preservation or a permit is required in the case of installation on a mast greater than 12 feet. Things to consider in determining the reasonableness of any costs imposed include: the cost of the equipment and services, whether there are similar requirements for other similar installations like air conditioning units or trash receptacles, and what visual impact the antenna has on the surroundings. Restrictions cannot require that relatively unobtrusive DBS

antennas be screened by expensive landscaping. A requirement to paint an antenna in a fashion that will not interfere with reception so that it blends into the background against which it is mounted would likely be acceptable. In general, the costs imposed by local regulations cannot be unreasonable in light of the cost of the equipment or services and the visual impact of the antenna.

Q: What restrictions prevent a subscriber from receiving an acceptable quality signal?

A: A requirement that an antenna be placed in a position where reception would be impossible or would be substantially degraded would conflict with the rule. However, a regulation requiring that antennas be placed to the extent feasible in locations that are not visible from the street would be permitted, if this placement would still permit reception of an acceptable quality signal.

Q: Are all restrictions prohibited?

A: No, many restrictions are still valid. Safety restrictions are permitted even if they impair reception, because local governments bear primary responsibility for protecting public safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes, restrictions requiring that a person not place an antenna within a certain distance from a power line, electrical code requirements to properly ground the antenna, and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. The restriction cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions in historic areas may also be valid. Because certain areas are considered uniquely historical and strive to maintain the historical nature of their community, these areas are excepted from the rule. To qualify as an exempt area the area must be listed or eligible for listing in the National Register of Historic Places. In addition, the area cannot restrict antennas if such a restriction would not be applied to the extent practicable in a non-discriminatory manner to other other modern structures that are comparable in size, weight and appearance and to which local regulation would normally apply. Valid historical areas cannot impose a more burdensome requirement than is needed to ensure the historic preservation goal.

Q: Whose restrictions are prohibited?

A: Restrictions are prohibited in state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions relating to what people can do on land within their exclusive use or control where they have a direct or indirect ownership interest in the property.

Q: If I live in a condominium where the land and the roof are commonly owned, or in an apartment building where the landlord owns the land and the roof, does this rule apply to me?

A: A *Further Notice of Proposed Rulemaking* has been adopted by the Commission, to obtain comments from interested persons about whether rules should apply in these situations. The Commission will use those comments to reach a decision on this question.

Q: What types of antennas are covered?

A. (1) A "dish" antenna that is one meter (39") or less in diameter or is located in Alaska and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on "masts" to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than 12 feet may be subject to local permitting requirements.

(3) An antenna that is designed to receive television broadcast signals. Masts higher than 12 feet may be subject to local permitting requirements.

Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?

A: If the local authority defines the restriction as safety-related it is valid, unless a court or the Commission determines that it is not safety-related or is not the least burdensome way to ensure the safety goal. If a local government or association has "highly specialized or unusual" concerns about antenna installation, maintenance or use, it may apply to the Commission for a waiver of the rule, to have its restriction declared valid. Interested parties may petition the Commission or a court of competent jurisdiction for a ruling to determine whether a particular restriction is permitted or prohibited under this rule.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the government or association trying to enforce the restriction will be responsible for proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the local government or association to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Who do I call if my town or neighborhood association is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (202) 418-0163. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service or television broadcast station whose service is desired.

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR

SOUTHWICKE TOWNHOMES

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TABLE OF CONTENTS

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SOUTHWICKE TOWNHOMES

KNOW ALL MEN BY THESE PRESENTS:

That SOUTHWICKE TOWNHOMES, INC., an Iowa corporation ("Declarant"), as developer of Southwicke Townhomes in the City of West Des Moines, Polk County, Iowa, desires to establish and place residential covenants, conditions and restrictions and does hereby reserve certain easements, all as hereinafter specifically set forth, on the following-described real property:

> Lot 2, Southwicke, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa (hereinafter the "Properties")

NOW, THEREFORE, Declarant hereby declares that the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any rights, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Southwicke Town Homes Association, its successors and assigns, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, 1991 as amended.

Section 2. "Association Responsibility Elements" shall mean the following:

(a) The exterior surface of the Building upon a Lot, excluding windows, doors, patios and decks.

(b) The structural portion of the Building upon a Lot.

(c) The roof, gutters, downspouts, and foundations of the Building upon a Lot.

(d) Any common wall between residential structures upon Lots, except the interior surfaces thereof.

(e) The yard surrounding the residential structure upon a Lot.

(f) Driveways and sidewalks.

(g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 5. "Common Elements" shall mean all common water lines, sewers, gas lines, electric lines and other utility service facilities located within the properties that serve more than one Living Unit.

Section 6. "Declarant" shall mean and refer to Southwicke TownHomes, Inc., its successors and assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions to which the Properties are subject.

Section 8. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 9. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot and designed and intended for use and occupancy as a resident by a single family.

Section 10. "Lot" shall mean and refer to any of the Lots in Lot 2, Southwicke, West Des Moines, Iowa, as shown on the Official Plat thereof.

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 12. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and vendees (deemed Co-owners), but excluding those having such interest merely as security for the performance of an obligation, and excluding those having a lien upon the property by provision or operation of law.

Section 13. "Properties" shall have the meaning set forth on Page 1 hereof.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership and Voting. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. Subject to provisions of Section 2 of this Article, the owners of a Lot other than the Declarant shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 2. Declarant as Sole Voting Member. Declarant shall be the sole voting member of the Association for so long as it holds title to any Lot.

Section 3. Board of Directors. The Voting Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Suspension of Voting Rights. The Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against his/her/its Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5. Notice of Member's Meetings. Unless the Articles of Incorporation or the By-Laws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than five (5) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary, or the officer or persons calling the meetings, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his/her/its address as it appears on the records of the Association, with postage thereon prepaid. So long as Declarant is the sole voting member of the Association, no regular or special membership meeting of the Association shall be held.

Section 6. Duration. No dissolution of the Association shall occur without the prior approval and consent of the City of West Des Moines, Iowa.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for

capital improvements and operating deficits; and special assessments as provided in this Article III, Article V and Article VI; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his/her/its successors in title unless separately assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Elements and the Living Units and situated on the Properties and for other purposes specifically provided herein.

Section 3. Maximum Monthly Assessment. Until January 1, 1992, the maximum monthly assessment for each Unit Owner shall be Sixty Dollars ($60.00) per Lot.

(a) From and after January 1, 1992, and without a vote of the Membership, the maximum monthly assessment may be increased effective January 1 of each year not more than 10% above the maximum assessment for the previous year.

(b) From and after January 1, 1992, the maximum monthly assessment may be increased above 10% by vote of a majority of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the monthly assessment at an amount not in excess of the maximum.

(d) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Elements, the Association Responsibility Elements, or of any capital improvement that the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement that the Association is required to maintain or for operating deficits that the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of all classes of Members who are voting in person or by proxy at a meeting duly called for this purpose, with regard to class designation.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 5 days nor more than 50 days

in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to each respective Lot on the first day of the first month following the date of conveyance to an Owner of a Lot with completed Living Unit constructed thereon and for which a certificate of occupancy has been issued. LOTS OWNED BY THE DECLARANT THAT DO NOT HAVE COMPLETED LIVING UNITS CONSTRUCTED THEREON AND COMPLETED UNITS THAT ARE NOT SOLD, LEASED OR OCCUPIED SHALL BE EXEMPT FROM THE ASSESSMENTS DESCRIBED IN THIS ARTICLE III AND THE ASSESSMENTS DESCRIBED IN ARTICLE VI. The maintenance responsibilities of the Association as to each Lot shall commence concurrently with the commencement of monthly assessments. The insurance assessment provided for in Article VI shall commence as to each Lot on the first day of the first month following the date of conveyance of

said Lot to an Owner. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in a recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 15% per annum or at the highest rate allowed by Iowa law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape

liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his/her/its Lot.

Section 9. Subordination of Assessments Liens. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE IV

DECLARANT'S RIGHTS

Declarant reserves the right to use any of the Lots as models and to sell, assign, or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the number, location, or manner of construction of buildings and other

improvements on the Properties including, without limitation, the substitution of screened-in porches for decks on certain Lots designated by Declarant; provided, that in all cases, such changes shall be accomplished in a manner consistent with applicable laws and ordinances.

ARTICLE V

MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his/her/its own expense, all maintenance and repairs of his/her/its Lot and all structures, improvements, and equipment located thereon including decorating and replacements within his/her/its residence, including the heating and air conditioning systems and any partitions and interior walls appurtenant to such residence, but except for the Association Responsibility Elements. He/she/it shall be responsible for the maintenance, repair, and replacement of all windows in his/her/its residence, the doors leading into the residence, and all electrical fixtures located on the exterior of the residence, and any and all other maintenance, repair, and replacements of the improvements, including decks, on his/her/its Lot unless otherwise provided herein. He/she/it shall also be responsible for the maintenance, repair, and replacement of all electrical wiring from the main electrical box to his/her/its residence, notwithstanding the fact that such wiring crosses a Common Element or is located off-premises from the Owner's Lot.

To the extent that equipment, facilities, and fixtures (including fences) within any Lot shall be connected to similar equipment, facilities, or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs, or replacements of or to any equipment, facilities, or fixtures affecting or serving other Lots.

Any repair or replacement of an exterior structure, improvement, or equipment (including, without limitation, electrical fixtures) shall match the original item that it repairs or replaces.

Section 2. Maintenance of Driveways. The Association shall be responsible for the maintenance, including snow removal, repair, and repaving of all driveways and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Properties by Declarant for the benefit of all Owners of Lots. Driveways shall be maintained at all times in such manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway.

Section 3. Maintenance Obligations of Association. In addition to maintenance upon the driveways and sidewalks, the Association shall provide all maintenance, repair, or replacement of the Association Responsibility Elements and Common Elements, including but not limited to maintenance upon each Lot that is

subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, lawns, shrubs (but excluding any gardens, plants, or flowers installed by any Owner and excluding patios and decks and any enclosed patio areas and decks and excluding any lawns, shrubs, etc. within any fenced area), trees, trash removal and snow removal from the paved portions of the front walks. In the case of lawns, shrubs, trees, and other elements of landscaping, the Association shall perform all necessary repairs, replacements, and maintenance thereof in a manner consistent with the level of maturity and development of the landscaping at the time that the repair, replacement, or maintenance activity occurs. The Association shall paint the exterior building surfaces of all Association Responsibility Elements and Common Elements that require paint no less often than every five (5) calendar years, initially measured from calendar year 1992. Such exterior maintenance shall not include glass surfaces, doors and doorways, windows, and window frames, or the operability of any garage doors.

In the event that the need for maintenance or repair is caused through the willful or negligence act of the Owner, his/her/its family, guests, invitees, agents, or contractors, the cost of such maintenance or repairs shall be added to and become a part of the assessments to which such Lot is subject.

ARTICLE VI

INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance for the Association Responsibility Elements in an amount consonant with the full replacement value of any such Elements. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provision that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on invalidity based upon the acts of the insured; and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the

insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf to the Association. Each Owner shall be deemed to have delegated to the Board of Directors his/her/its right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the

Association and the pro rata cost thereof shall become a separate monthly assessment (over and above the assessments described in Article III, Sections 3 and 4 herein) to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VII. Each Owner shall prepay to the Association at the time his/her/its Lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the purchase of insurance as herein provided or shall use such funds to prepay the premiums of the required insurance. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and his/her/its mortgagee jointly, or in accordance with the terms of any endorsement in favor of said mortgagee.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and should obtain such additional insurance as he/she/it deems necessary or desirable at his/her/its own expense